

FILE COPY

STATE OF WISCONSIN BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE APPLICATION	:	
FOR REREGISTRATION OF THE	:	
CERTIFICATE OF APPRENTICESHIP OF	:	FINAL DECISION
	:	AND ORDER
CARLTON W. MOORE,	:	
APPLICANT.	:	

The parties to this proceeding for the purposes of Wis. Stats. sec. 227.53 are:

Carlton W. Moore
4239 W. Roosevelt Drive
Milwaukee, WI 53216

Funeral Directors Examining Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

The rights of a party aggrieved by this decision to petition the board for rehearing and to petition for judicial review are set forth in the attached "Notice of Appeal Information".

This matter was commenced by the filing of a Notice of Hearing dated June 1, 1989. Pursuant to the notice, the purpose of the proceeding was to provide the applicant, Carlton W. Moore, with a hearing upon the decision of the Funeral Directors Examining Board to deny his application for reregistration as an apprentice funeral director. More specifically, the issue raised under the Notice of Hearing, is:

"...(W)hether the Board's denial of an additional re-registration to Carlton Moore was arbitrary and capricious, in light of Mr. Moore's failure to obtain the requisite education for full licensure after over nine and one-half (9 1/2) years of apprenticeship."

An evidentiary hearing was held on June 19, 1989. Carlton W. Moore, applicant herein, appeared in person and without legal counsel. The Department of Regulation and Licensing appeared by Attorney Steven M. Gloe.

The hearing examiner filed his Proposed Decision on August 17, 1989. The board considered the matter on October 10, 1989.

Based upon the entire record in this case, the Funeral Directors Examining Board makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Carlton W. Moore (applicant), 4239 West Roosevelt Drive, Milwaukee, Wisconsin, was issued an original certificate of apprenticeship on May 30, 1979. The certificate was reissued on December 21, 1979.

2. The board notified applicant on July 3, 1980, that he had completed the requirements for licensure of 12 months active apprenticeship and the apprenticeship study program.

3. Applicant renewed his certificate of apprenticeship on December 22, 1980, January 14, 1982, and December 23, 1982. In conjunction with the 1982 renewal, applicant informed the board that he would be "starting school at M.A.T.C. in Sept. of 1983."

4. Applicant applied for renewal of his certificate on December 17, 1983, notifying the board at that time that "I haven't been able to enroll in a school yet. I'm intending to enroll in M.A.T.C. in the fall of 1984....I have the 60 college credits all I'm waiting is to get in a credited school for funeral directing and embalming. (sic)" Applicant was granted re-registration as an apprentice on December 23, 1983.

5. Applicant renewed his certificate of apprenticeship on January 15, 1985, December 15, 1986, and January 28, 1988. In conjunction with the 1988 renewal, applicant informed the board that "starting next Sept. Fall semester I will be attending Embalming & Funeral Directors classes to obtain my license." In response, the board informed applicant as follows:

Please review FDE 2.03, Wisconsin Administrative Code, to make sure that you meet all educational requirements needed to take the examination for licensure. All requirements must be completed prior to examination. Upon completion of school requirements, please submit a transcript to the board office for verification.

6. By application dated December 14, 1988, applicant applied for extension of his certificate of apprenticeship. The board denied the application by its Notice of Denial and Notice of Right to Request Hearing on Denial. The denial as set forth therein is as follows:

A registered apprentice funeral director must make application for license and must appear before the examining board for examination within four years from the date of registration unless the time is extended under this chapter. More specifically the application does not include satisfactory completion of the following:

1. Evidence of having completed two academic years of instruction as specified in FDE 2.03, Wis. Adm. Code.

2. Evidence of having completed nine months or more instruction in a prescribed curriculum in funeral service education offered by an educational institution accredited by the American Board of Funeral Service Education.

7. Applicant has not completed the required nine months of instruction in mortuary science, and must complete approximately twenty additional credits of academic instruction in subjects specified in Wis. Adm. Code sec. FDE 1.04 in order to qualify to sit for the licensing examination.

8. Applicant estimates it will take him approximately two years to complete all the educational requirements.

9. The board has discretion under Wis. Stats. sec. 445.10 to further extend applicant's certificate of apprenticeship or to deny further extensions.

10. At the time the board renewed applicant's registration for the last time on January 28, 1988, the board did not notify applicant that future requests for extension of the certificate would be denied.

CONCLUSIONS OF LAW

1. The Funeral Directors Examining Board has jurisdiction in this matter pursuant to Wis. Stats. sec. 445.03(2)(b) and 445.10.

2. The board has discretion under Wis. Stats. sec. 445.10 to further extend applicant's certificate of apprenticeship or to deny further extensions.

ORDER

NOW, THEREFORE, IT IS ORDERED that the application of Carlton W. Moore for reregistration of his certificate of apprenticeship, is denied.

EXPLANATION OF VARIANCE

In order to become licensed as a funeral director in this state there are statutory requirements which must be met. Those prerequisites are set forth in Wis. Stats. sec. 445.045. They include the service of an apprenticeship under a licensed funeral director, two years of college education in study approved by the board, and nine months of specific instruction in mortuary science. The apprenticeship provision, at issue in this case, provides as follows:

445.045 License requirements. (1) To be eligible for an original funeral director's license, a person must meet all of the following requirements:

....

(f) Have completed one year of apprenticeship as prescribed in s.445.095 at any time after having completed one year of college work or equivalent education and either before or after taking the course in mortuary science....

Thus, in order to become a funeral director, a person must not only receive both a general and profession specific institutional education, but must serve an apprenticeship in order to "learn...the practice of funeral directing under the instruction and personal supervision" of a licensed funeral director. See, Wis. Stats. sec. 445.01(2).

Under the foregoing and other statutes of the board pertaining to apprenticeships, it is clearly the intent and purpose of an apprenticeship certificate to facilitate the acquisition of practical experience required of persons desiring to become funeral directors. A funeral director apprenticeship does not constitute a profession or career in itself; but rather, its completion is merely a stepping-stone to ultimate licensure as a funeral director.

The issue presented in this case, generally stated, is whether or not the board should again exercise its discretion to renew the certificate of apprenticeship for Mr. Moore, despite the fact that he has not completed the required nine months of instruction in mortuary science in the 9 years he has held that certificate.

As stated by the examiner:

There is no question that the Funeral Directors Examining Board has statutory authority and discretion to decide whether Mr. Moore's registration shall be renewed yet another time. In light of the number of times that the board has acquiesced in its renewal over the last number of years, there's also little question that it could not be deemed an abuse of discretion for the board to deny its renewal now.

It is the board's opinion that a further renewal of Mr. Moore's apprenticeship certificate, given the facts of this case, would only serve to undermine the purpose of serving an apprenticeship under the statute and tend to encourage a further delay of Mr. Moore's assumed intent of acquiring the educational requirements he needs in order to become a funeral director.

The record in this case indicates that Mr. Moore no longer needs further apprenticeship training in order to satisfy that component of the requirements leading to licensure as a funeral director in this state. Mr. Moore received his original certificate as an apprentice funeral director in December, 1979, and in July, 1980 he was notified that the apprenticeship requirement had been successfully completed.

However, after fulfilling the apprenticeship requirement, Mr. Moore applied for and received annual renewals of his certificate at his request. Knowing that the board requires justification for continuing an apprenticeship—for which an individual receives compensation pursuant to s. 445.095(1)(b)—the record in this case indicates that on at least three occasions, Mr. Moore represented to the board that he intended to begin meeting the condition of nine months of instruction in mortuary science in the

fall of the renewal year. These representations involved renewals for the years 1983, 1984 and 1988. (Mr. Moore's statement to this effect regarding the 1988 renewal has been added to Finding of Fact #5).

Despite Mr. Moore's stated intent over the years, he has never begun to fulfill the mortuary science requirement. Mr. Moore indicated at the hearing in this matter that he was not unduly surprised that the board denied his 1989 renewal application; nor could he be given that he had again been advised of the necessity for acquiring the educational requirements at the time of his 1988 renewal and again failed to obtain them. It is the board's opinion that Mr. Moore has been given more than an adequate amount of time in which to obtain the required education leading to licensure as a funeral director while holding an apprentice's certificate.

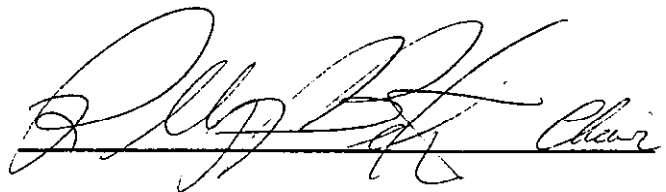
Mr. Moore's apprenticeship requirement is complete, and has been for a substantial period of time. Assuming that Mr. Moore truly desires to become licensed as a funeral director in this state, it is time that he take action to complete the educational phases of the licensure requirements.

Under sec. 445.045(1)(f), an individual may obtain experience in funeral directing as an apprentice either before or after, but not during the receipt of intensive education in mortuary science. The granting of another renewal of Mr. Moore's apprenticeship certificate may only induce him to further delay obtaining the education necessary for him to become a funeral director in deference to being compensated for continuing to provide services under the authority of his apprentice certificate. Such board action would not be appropriate. If Mr. Moore is truly desirous of becoming a licensed funeral director in this state, his application should be denied in order to encourage him to actually carry through on the often promised, but long neglected, satisfaction of the educational requirements. Denial is necessary, of course, if he does not actually desire to become a funeral director in this state.

In either event, Mr. Moore's renewal application must be denied at this time.

Dated at Madison, Wisconsin this 14th day of November, 1989.

STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD

A handwritten signature in cursive script, likely of the Chair of the Funeral Directors Examining Board, written over a horizontal line. The signature is fluid and somewhat stylized.

DRR
EXC12349

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each and the identification
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with State of Wisconsin Funeral Directors Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon State of Wisconsin Funeral Directors Examining Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: State of Wisconsin Funeral Directors Examining Board.

The date of mailing of this decision is November 15, 1989.

WLD:dms
886-490

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employee trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally

disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.

BEFORE THE STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE
APPLICATION FOR RENEWAL OF THE
APPRENTICESHIP PERMIT OF

CARLTON W. MOORE
APPLICANT.

NOTICE OF FILING
PROPOSED DECISION

TO: Carlton W. Moore
4239 W. Roosevelt Drive
Milwaukee, WI 53216

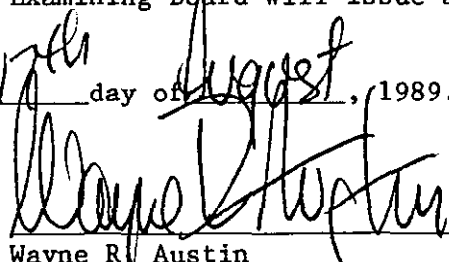
Steven M. Gloe, Attorney
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Funeral Directors Examining Board by the Hearing Examiner, Wayne R. Austin. A copy of the Proposed Decision is attached hereto.

If you are adversely affected by, and have objections to, the Proposed Decision, you may file your objections, briefly stating the reasons and authorities for each objection, and argue with respect to those objections in writing. Your objections and argument must be submitted and received at the office of the Funeral Directors Examining Board, Room 290, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O.Box 8935, Madison, Wisconsin 53708, on or before September 1, 1989.

The attached Proposed Decision is the examiner's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision together with any objections and arguments filed, the Funeral Directors Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 17th day of August, 1989.


Wayne R. Austin
Hearing Examiner

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF
THE APPLICATION FOR RENEWAL OF THE APPRENTICESHIP PERMIT OF

CARLTON W. MOORE

Applicant

PROPOSED DECISION

A Class 1 proceeding was conducted in the above-captioned matter on June 19, 1989, at 1400 East Washington Avenue, Madison, Wisconsin. Carlton W. Moore, applicant herein, appeared in person and without legal counsel. The Department of Regulation & Licensing appeared by Attorney Steven M. Gloe.

Based upon all information of record herein, the hearing examiner recommends that the Funeral Directors Examining Board adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Carlton W. Moore (applicant), 4239 West Roosevelt Drive, Milwaukee, Wisconsin, was issued an original certificate of apprenticeship on May 30, 1979. The certificate was reissued on December 21, 1979.

2. The board notified applicant on July 3, 1980, that he had completed the requirements for licensure of 12 months active apprenticeship and the apprenticeship study program.

3. Applicant renewed his certificate of apprenticeship on December 22, 1980, January 14, 1982, and December 23, 1982. In conjunction with the 1982 renewal, applicant informed the board that he would be "starting school at M.A.T.C. in Sept. of 1983."

4. Applicant applied for renewal of his certificate on December 17, 1983, notifying the board at that time that "I haven't been able to enroll in a school yet. I'm intending to enroll in M.A.T.C. in the fall of 1984. . . . I have the 60 college credits all I'm waiting is to get in a credited school for funeral directing and embalming." Applicant was granted re-registration as an apprentice on December 23, 1983.

5. Applicant renewed his certificate of apprenticeship on January 15, 1985, December 5, 1985, December 15, 1986, and January 28, 1988. In conjunction with the 1988 renewal, the board informed applicant as follows:

Please review FDE 2.03, Wisconsin Administrative Code, to make sure that you meet all educational requirements needed to take the examination for licensure. All requirements must be completed prior to the examination. Upon completion of school requirements, please submit a transcript to the board office for verification.

6. By application dated December 14, 1988, applicant applied for extension of his certificate of apprenticeship. The board denied the application by its Notice of Denial and Notice of Right to Request Hearing on Denial. The basis for denial as set forth therein is as follows:

A registered apprentice funeral director must make application for license and must appear before the examining board for examination within four years from the date of registration unless the time is extended under this chapter. More specifically the application does not include satisfactory completion of the following:

1. Evidence of having completed two academic years of instruction as specified in FDE 2.03, Wis. Adm. Code.
2. Evidence of having completed nine months or more instruction in a prescribed curriculum in funeral service education offered by an educational institution accredited by the American Board of Funeral Service Education.

7. Applicant has not completed the required nine months of instruction in mortuary science, and must complete approximately twenty additional credits of academic instruction in subjects specified in Wis. Adm. Code sec. FDE 1.04 in order to qualify to sit for the licensing examination.

8. Applicant estimates it will take him approximately two years to complete all the educational requirements.

9. The board has discretion under Wis. Stats. sec. 445.10 to further extend applicant's certificate of apprenticeship or to deny further extensions.

10. At the time the board renewed applicant's registration for the last time on January 28, 1988, the board did not notify applicant that future requests for extension of the certificate would be denied.

CONCLUSIONS OF LAW

1. The Funeral Directors Examining Board has jurisdiction in this matter pursuant to Wis. Stats. sec. 445.03(2)(b) and 445.10.

2. The board has discretion under Wis. Stats. sec. 445.10 to further extend applicant's certificate of apprenticeship or to deny further extensions.

ORDER

NOW, THEREFORE, IT IS ORDERED that the registration of Carlton W. Moore as an apprentice funeral director be, and hereby is, renewed.

IT IS FURTHER ORDERED that upon demonstration by Carlton W. Moore at the time of any petition for further renewal of his registration of his satisfactory participation in the academic instruction and funeral service education required for his admission to the board's licensure examination, his registration as an apprentice funeral director shall be renewed for additional periods not to exceed a total of two years from the date of the order of the Funeral Directors Board adopting the terms of this Proposed Decision.

OPINION

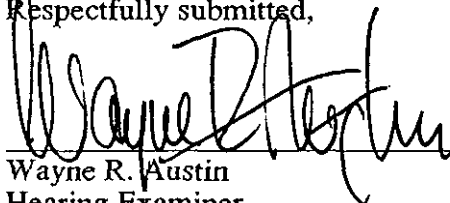
There is no question that the Funeral Directors Examining Board has statutory authority and discretion to decide whether Mr. Moore's registration shall be renewed yet another time. In light of the number of times that the board has acquiesced in its renewal over the last number of years, there's also little question that it could not be deemed an abuse of discretion for the board to deny its renewal now. Nonetheless, there are three factors which, in the opinion of the hearing examiner, militate for its renewal. First, and obviously most important, there is nothing in this record to indicate that Mr. Moore's practice as an apprentice funeral director has not been carried out in a perfectly competent manner. The public health, safety and welfare does not therefore require that his registration be terminated at this time if there are any countervailing factors which favor its renewal.

Second, the board annually renewed applicant's registration as an apprentice five times following the four year term of apprenticeship prescribed by Wis. Stats. sec. 445.10; apparently without any specific notification to Mr. Moore that a final deadline on his apprenticeship training had been or was going to be established. It is not necessary to conclude that such notice was a legal necessity to decide both that Mr. Moore may have been lulled into a false sense of security by the absence of such notice, and that the more equitable course would have been to let the applicant know that he was working against a defined deadline.

Third, Mr. Moore has invested a considerable number of years in a career which he has indicated he wishes to continue to pursue, and it would appear that the educational prerequisites to the examination process are well within his grasp. The record indicates that applicant needs approximately two years to complete his educational requirements, and that he is presently actively pursuing that goal. Whether Mr. Moore can simultaneously both complete the educational requirements and practice as an apprentice funeral director may be in question. Whether it is his intent to do so is not. Inasmuch as the suggested order provides that continued renewal of his registration for a maximum total of two years is dependent on demonstration of his active participation in the required educational programs, there seems little reason not to let him try.

Dated this 17th day of August, 1989.

Respectfully submitted,


Wayne R. Austin
Hearing Examiner

wra: 9095